

Bulletin Update

JUNE 2025

DIV 296 TAX



DIV 296 TAX MEMBER'S SUPER BALANCES >\$3M

Key Points of New Div 296 Tax (Draft Legislation)

- Applies to members who have a total superannuation balance >\$3m (first test date = 30 June 2026)
- Only applies to earnings above the \$3m (income includes "unrealised gains")
- 15% tax rate on the earnings over \$3m (effective tax rate on earnings over \$3m = 30%)
- Applies from 1 July 2025 (first tax = year ending 30 June 2026)
- Legislation expected to be passed as drafted with a Labor majority & Senate support

Summary

With the Labor majority government being re-elected and also Senate support for the new Div 296 tax, this tax is expected to be introduced as it has been drafted effective from the 1 July 2025.

Whilst the tax has a start date of the 1 July 2025 it is important to remember that the first taxing point is the year ended 30 June 2026. Accordingly, there is plenty of time to have a considered approach to assess any plans and then implement strategies prior to 30 June 2026 (the first measurement test for balances >\$3.0m).

Matters for Further Consideration

1. The legislation is currently only “draft” legislation, and it is appropriate to wait until the final legislation has passed before withdrawing any funds from superannuation as there are limited opportunities to contribute funds back into super should the legislation for some reason not proceed or be amended.
2. The Div 296 tax only applies to individuals who have a combined super balance of >\$3m (all funds). The \$3m test is per member and not of the super fund's total balance. If a member's balance (individual super account balance) is <\$3m then the new Div 296 does not apply.
3. Superannuation is still a very tax effective structure. In summary, with the Transfer Balance Cap (TBC) increasing to \$2.0m on 1 July 2025, the effective tax rates on superannuation from the 1 July 2025 will be as follows;

Accumulation Phase (amounts per member)

- 0 - \$3.0m
 - Income Tax = 15% (less any franking credits)
 - Capital Gains Tax (realised gains) = 10% (assets >12mths) and 15% (assets <12mths)
- > \$3.0m = income + unrealised gains taxed at 30% (an additional 15% Div 296 tax)

Pension Phase (amounts per member)

- 0 - \$2.0m
 - Income Tax = 0% (any franking credits are refundable)
 - Capital Gains Tax (realised gains) = 0% (all asset sales whether <12mths or >12mths)
- \$2.0m - \$3.0m
 - Income Tax = 15% (less any franking credits)
 - Capital Gains Tax (realised gains) = 10% (assets >12mths) and 15% (assets <12mths)
- \$3.0m = income + unrealised gains taxed at 30% (an additional 15% Div 296 tax)

Div 296 Tax

The new Div 296 tax will apply to the earnings on the Member's balance over \$3m as follows.

1. Income (interest, dividends etc) derived on balances >\$3m will be taxed at 30% (current super tax rate of 15% + new Div 296 tax an additional 15%)
2. Capital Gains (assuming assets have been held for >12mths) will be taxed at 25% (realised capital gains at 10% + Div 296 tax on unrealised capital gains of 15%)
3. Div 296 effective tax rate will be calculated on the movement in net assets from 30-Jun-25 to 30-Jun-26
 - Div 296 tax is levied on the “Adjusted Earnings” (Draft legislation only at this stage)
 - Adjusted Earnings FY26 = Balance 30-Jun-26 less Balance 30-Jun-25 = Net Movement then adjustments as follows applied; + Pension Payments + Lump Sum Payments + Div 293 tax + Div 296 release amounts - Super contributions (net of tax) = Adjusted Earnings
4. Example Div 296 tax calculation (Member's Balance 30 June 2025 v 30 June 2026)
 - If a Member's Balance increased from \$3.5m to \$3.8m (no adjustments) Div 296 Earnings = \$300,000
 - Proportion of Member's balance that is over \$3.0m = \$800,000 = 21% (\$800k / \$3.85m)
 - Div 296 taxable amount = \$800,000 x 21% = \$168,000 · Div 296 tax (additional 15%) = \$168,000 x 15% = \$25,200
 - Div 296 tax will be assessed to the individual & funded by a release of funds from the Member's account

Forward Planning

Whether to retain funds within Super if >\$3m will depend on the nature of the investments in the fund (income or capital growth orientated) and what the tax rate is on the funds if invested in alternative structures outside of Super such as a Trust or Company.

Important to remember that if liquidating assets out of super to another structure this is dependent upon the member being able to access their superannuation (ie. you need to satisfy a "Condition of Release" to access your super)

Further, under the draft Div 296 legislation, the \$3m threshold test is to apply on the last day of the financial year. Therefore, even though the new Div 296 is to apply from 1 July 2025, provided your Super balance was \$3m or less on 30 June 2026 (first test date) then no additional tax liability would apply.

Valuations - 30 June 2025

We recommend particular attention be paid to the valuations of unlisted assets at 30 June 2025. The new Div 296 tax will apply to market value movements in asset values from the previous financial year (ie includes unrealised gains) with effect from the 1 July 2025. Therefore, making sure your 2025 valuations of unlisted assets are correct in your 2025 financial statements will be particularly important.

Death Benefits Tax

We recommend particular attention be paid to the valuations of unlisted assets at 30 June 2025. The new Div 296 tax will apply to market value movements in asset values from the previous financial year (ie includes unrealised gains) with effect from the 1 July 2025. Therefore, making sure your 2025 valuations of unlisted assets are correct in your 2025 financial statements will be particularly important.

Conclusion

Whilst the legislation is only in draft form at present, it is likely to proceed as drafted with support from the Greens in the Senate. Whilst there is 12 months to 30 June 2026 to implement plans & strategies, individuals who are likely to be impacted should start considering their options now based on their own individual circumstances (which will differ from individual to individual) in advance of 30 June 2026 (assuming Div 296 will be implemented as expected).

We will be reviewing all our clients with individual super balances >\$2m and will contact you to discuss the impacts (including potential future impacts for those in the \$2m to \$3m bracket) of the new Div 296 and the options available.

In the interim, if you have any concerns or wish to discuss this further (ahead of us contacting you), please reach out to your Mitchell Partners representative.

Need Help Understanding How Div 296 Affects You?

We're here to support you with personalised advice and smart planning strategies. Contact your Mitchell Partners adviser today or call **(03) 9895 9333** to book a consultation.

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